

The Honorable Jamal N. Whitehead

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARGARET MILLER-HOTCHKISS,

CASE NO. 2:23-cv-00908-JNW

Plaintiff,

STIPULATED MOTION TO MODIFY
SCHEDULING ORDER AND ~~PROPOSED~~
ORDER

SAFEWAY, INC.,

HEARING DATE: MARCH 14, 2025

Defendant.

I. RELIEF REQUESTED¹

The Parties jointly seek to modify the scheduling order, to extend the discovery cutoff to March 19, 2025, to allow Defendant SAFEWAY, Inc. (“Safeway”) to take the deposition of Plaintiff’s medical expert, Dr. Oberg. This proposed change would not change the trial date, nor affect the dispositive motions deadline. This deposition is scheduled; the doctor has been subpoenaed; and the parties are ready to proceed.

Whereas the Court denied a prior-similar stipulated motion because it affected the dispositive motions deadline, the requested relief herein would not do that. Good cause exists for this limited modification of the scheduling order to allow new-substitute counsel for

¹ Because this motion is so similar to a previously filed stipulated motion which this Court denied without prejudice, the parties are bolding the only new/different information to assist with the Court's review. *See* Dkt. #25 (prior stipulated motion); *see also* Dkt. #27 (minute order denying motion).

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PROPOSED ORDER

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1 Safeway, who have spent the last several months familiarizing themselves with the issues and
 2 the record in this two-year-old case, to complete this discovery.

3 **II. STATEMENT OF RELEVANT FACTS**

4 This lawsuit arises out of a slip and fall incident at Safeway on September 25, 2021.
 5 *See* Original Compl., Dkt. #1, Attach. 2. Plaintiff MARGARET MILLER-HOTCHKISS
 6 ("Plaintiff") originally filed suit in King County Superior Court, on March 21, 2023. *See id.*
 7 Safeway subsequently removed this lawsuit to this Court by filing a Notice of Removal on
 8 June 15, 2023. Dkt. #1. In the twenty months that this case has been venued in this Court, the
 9 parties have completed the depositions (1) of the Plaintiff; (2) of Safeway, under Rule 30(b)(6);
 10 and (3) of Plaintiff's liability/human factors expert, Ethan Fenley. Mr. Fenley is one of three
 11 experts designated in Plaintiff's FRCP 26(a)(2) Disclosure of Expert Testimony. The other
 12 two are Paul A. Manner, M.D., an orthopedic surgeon, and Pontus B. Oberg, D.O., a physical
 13 medicine and rehabilitation doctor. Both of whom are expected to offer testimony in support
 14 of Plaintiff's case (per Plaintiff's FRCP 26(a)(2) Disclosure Statement, omitted). Whereas
 15 prior counsel for Safeway took the deposition of Mr. Fenley, and was scheduled to take the
 16 depositions of Drs. Manner and Oberg, the latter two depositions were vacated via agreement
 17 of the parties at or around the time of prior defense's counsel's withdrawal, with the plan being
 18 that new-substitute counsel would take these depositions once they had the opportunity to
 19 familiarize themselves with the facts and the issues in the case. *See* Dkt. # 16 (Stipulated
 20 Motion to Extend Trial Date); *see also* Dkt. # 20 (Order Setting Trial Date and Related Dates).²

21 **III. STATEMENT OF ISSUES**

22 Whether good cause exists to modify the scheduling order in the manner requested
 23 below to enable new counsel for Safeway, who replaced prior counsel, who retired in order to
 24

25 ² Prior counsel for Safeway withdrew on November 9, 2024, on account of personal issues related to his
 elderly parents' health.

1 care for his ailing parents, to complete discovery primarily in the form of Plaintiff
 2 expert depositions that prior counsel noted but did not complete prior to his withdrawal.

3 **IV. EVIDENCE RELIED UPON**

4 This motion is based on the records and pleadings on file with the Court.

5 **V. AUTHORITY**

6 **A. Good Cause Exists To Modify The Scheduling Order**

7 FRCP and LCR 16 allow parties to modify the dates specific in the operative
 8 scheduling order on a showing of good cause. FRCP 16(b)'s good cause standard primarily
 9 considers the diligence of the party or Parties seeking modification of the scheduling order.
 10 *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). "The district court
 11 may modify the pretrial schedule 'if it cannot reasonably be met despite the diligence of the
 12 party seeking the extension.'" *Id.* (citing FRCP 16 advisory committee's notes, 1983
 13 amendment). The Ninth Circuit reviews motions to amend or modify, and motions for leave to
 14 conduct further discovery, for abuse of discretion. *FTC v. Marshall*, 781 Fed. Appx. 599, 602-
 15 03 (9th Cir. 2019).

16 In this case, the parties have been diligently and cooperatively completing discovery
 17 since the time of removal to this this Court in or around June 2023. With respect to discovery
 18 that Safeway has yet to complete, and that Safeway is seeking a slight extension of the existing
 19 discovery deadline in order to accommodate, prior counsel for Safeway actually had those
 20 depositions noted previously and was poised to take them, but had to withdraw immediately to
 21 care for his ailing parents. The hurried circumstances of this withdrawal and the appearance of
 22 new counsel for Safeway influenced the terms that then-acting counsel for the parties sought in
 23 their last stipulated Motion to Continue to Extend Trial Date (Dkt. #16), including the setting
 24 of a March 7, 2025, discovery cut-off. The Motion also expressly stated that new counsel for
 25 Safeway "needs time to get up to speed" in a case that had been going on at that point for over

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1 a year-and-a-half. Dkt. #16 at p.3. New counsel for Safeway is up to speed now, and is ready
 2 to proceed and take these depositions and finish the discovery prior counsel commenced;
 3 however, a limited time remains in discovery and Plaintiff's two remaining experts are not
 4 available for depositions within that time. Ergo, the parties agree that counsel for Safeway
 5 needs, and should have, more time to complete this discovery.

6 **B. Proposed Amended Schedule**

7 Event	8 Existing Deadline	9 New Deadline
10 Discovery deadline	11 March 7, 2025	12 <u>March 19, 2025</u>
13 Dispositive motions	14 April 7, 2025	15 No change
16 Settlement conference	17 June 5, 2025	18 No change
19 All motions in limine	20 June 25, 2025	21 No change
22 Deposition designations	23 July 14, 2025	24 No change
25 Agreed pretrial order	26 Jule 14, 2025	27 No change
28 Trial briefs, etc.	29 July 21, 2025	30 No change
31 Pretrial conference	32 July 28, 2025	33 No change

34 **VI. CONCLUSION**

35 In light of and based on the foregoing, the Parties ask the Court to modify the
 36 scheduling order in the manner requested above, and to issue an amended scheduling order.
 37

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2 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
3
4 DATED this 14th day of March, 2025.
5

WILLIAMS, KASTNER & GIBBS PLLC

GLP ATTORNEYS, P.S., INC.

s/Eddy Silverman

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11 *Counsel for Defendant Walmart Inc.*

12 *Counsel for Plaintiff Maragaret Miller-
Hotchkiss*

13
14
15 ORDER
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17 The Court GRANTS the Parties' stipulated motion and MODIFIES the discovery
18 deadline in accordance with the terms of the Parties' agreement.

19 IT IS SO ORDERED this 25th day of March, 2025.

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21 HONORABLE JAMAL N. WHITEHEAD
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